delayed until after the conclusion of the proceedings on appeal. This seems to introduce an element of uncertainty and inconvenience, requiring such a motion in every case to hold the right of new trial open in the event of an adverse decision in the higher court. Such procedure tends to increase litigation and trouble more than would a liberal construction of the statute, which would permit the motion after the judgment had been changed to accord with the decision on appeal. M. K. W.

PAROLE LAW: CALIFORNIA ACT OF 1913: STATUTORY CONSTRUCTION.—The Act of the Legislature entitled "An Act to establish a board of parole commissioners for the parole of and government of paroled prisoners"[1] has been under construction by the California Supreme Court to the case of *Roberts v. Duffy*.[2]

The questions before the court were: (1) whether a prisoner serving a first term was entitled as of right to file an application with the board after serving one year of his sentence; and (2) whether such a prisoner is further entitled of right to a parole, if his prison record has been good. The court answers the first question in the affirmative, the second in the negative.

The provision of the act under which the petitioner claimed his rights, is as follows: "The state board of prison directors of the state shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned in any state prison, and who may have served one calendar year of the term for which he was convicted, may be allowed to go upon parole outside of the buildings and enclosure, but to remain while on parole in the legal custody and under the control of the state board of prison directors and subject at any time to be taken back within the enclosure of said prison; and full power to make and enforce such rules and regulations, to grant paroles thereunder and to retake and imprison any convict so upon parole is hereby conferred upon said board of directors."

The petitioner complained that the following rule adopted by the state board of prison directors denied him his rights under the act:

"Rule 5. Half term must be served. No application for parole shall be filed by the clerk until the prisoner shall have served one-half his sentence unless for some extraordinary reason the same shall have been recommended in writing by the warden with his reasons therefor and ordered filed by the affirmative vote of at least four members of the board."

The court held that the petitioner's contention was good, that he must be allowed to file his application for parole, which the board must consider, but might allow or deny it at discretion. We are

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[1] Cal. Stats. 1913, p. 1048.
[2] (April 11, 1914), 47 Cal. 582.

entirely unable to follow the reasoning of the court. The act is an act to establish a board of parole commissioners for the parole and government of paroled prisoners. It is not an act to give rights to prisoners to be paroled or even to be allowed to make application for parole. It provides that the state board of prison directors shall have power to establish rules and regulations under which any prisoner who may have served one year of his sentence may be allowed to go upon parole. It is all permissive and not mandatory. Its only qualification is that the board may not grant, or make rules and regulations for the granting of, paroles to prisoners who have not served at least one year of their sentence.

Perhaps the rule of the board of prison directors is arbitrary and harsh and not in keeping with the spirit of prison reform. We incline to think that it is. Perhaps the law should make it the right of a prisoner, after serving one year, to apply for a parole, thus throwing upon the board the onus of saying that he has not earned it: a matter which seems to us debatable. But it is not the province of the court to read into the act a meaning which is not expressed; and this, in our opinion, is what it has done.

We fully agree with the dissenting opinion of Mr. Justice Shaw, and, as he says, "the only right granted to a prisoner by the decision of the court would seem to be utterly useless. The prisoner is given the poor comfort of being allowed to have his application filed by the clerk and received and considered by the board, with the statement that after receiving it the board may refuse it with or without reason, and that their action is beyond review and final." W. C. J.

PUBLIC UTILITY: POWER OF RAILROAD COMMISSION TO ORDER EXTENSION OF SERVICE.—At first appearance it seemed that in rendering the decision of *Del Mar Water Company v. Eshleman*[1] the Supreme Court was taking another step in curtailing the powers of the Railroad Commission. But in denying the petition for a rehearing[2] the court indicated that all that it had actually decided was that the party demanding service from the water company "is not and is not found by the Commission to be within the district, or area, to the use of which the water owned by that company is dedicated".

However, before reaching this manifestly sound conclusion on a comparatively minor issue, the court gave expression to language which led the Commission to suggest in its petition for a rehearing that the result of the decision would be that "effective regulation in this state must revert to that somnolent condition from which it awakened when this Commission took office". The Commission further informed the court that "if this court is right in its determination of the questions here involved, then we

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[1] (Apr. 11, 1914), 47 Cal. Dec. 571.
[2] (May 13, 1914), 47 Cal. Dec. 631.